

In the Matter of FLORIDA SHIPBUILDING CORPORATION and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA,
C. I. O.

Case No. 10-R-1379.—Decided March 7, 1945

Charles D. Mercer, of Rochester, N. Y., by *Mr. Joe W. Hudgins*, of Miami Beach, Fla., for the Company.

Mr. Charles N. Smolikoff, of Miami, Fla., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Florida Shipbuilding Corporation, Ojus, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George S. Slyer, Trial Examiner. Said hearing was held at Miami, Florida, on February 13, 1945. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Company moved to dismiss the petition. The Trial Examiner reserved rulings thereon. The motions are hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Florida Shipbuilding Corporation is a Florida corporation with its shipyard at Ojus, Florida, where it is engaged in building steel ocean-going gasoline tankers for the United States Army Transporta-

tion Corps. The grounds, buildings, and equipment used by the Company at Ojus, Florida, are owned by Odenbach Holding Corporation of Rochester, New York. During the 6-month period preceding the date of the hearing, the Company used steel and machinery valued in excess of \$300,000, 30 percent of which was shipped to it from points outside the State of Florida. During the same period the Company had partly constructed five tankers valued at about \$250,000 each, which when completed, will be delivered to the United States Army Transportation Corps at Ojus, Florida. The Company is a subcontractor under a prime contract held by Lancaster Iron Works, Lancaster, Pennsylvania. The latter ships most of the raw materials used by the Company to it and retains title to the raw materials until they are assembled in the ships. The Company does not ship out any of its finished products in interstate commerce and contends that it is not engaged in commerce within the meaning of the National Labor Relations Act. We do not agree with this contention, and find that the Company is engaged in commerce within the meaning of the Act.¹

II. THE ORGANIZATION INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 1, 1944, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company did not reply to this request.

Statements of a Field Examiner of the Board and the Trial Examiner, introduced into evidence at the hearing, indicate that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all employees at the Ojus, Florida, shipyard of the Company, including leadmen, material clerks, and tool and stockroom attendants, but excluding office and clerical employees, guards, timekeepers, nurses,

¹ See *Matter of Odenbach Shipbuilding Company*, 47 N. L. R. B. 1261.

² The Field Examiner and the Trial Examiner reported that the Union presented 181 membership application cards. There are approximately 536 employees in the appropriate unit. We find, contrary to the contentions of the Company, that the Union has made a substantial *prima facie* showing of representation.

company hotel employees, foremen, assistant foremen, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

At the time of the hearing approximately 180 employees had transferred from the shipyard of Odenbach Shipbuilding Corporation at Rochester, New York, herein called Odenbach, to the Company's shipyard at Ojus, Florida, for the purpose of training new employees in the special type of construction used by Odenbach and the Company. These employees are carried on the pay roll of the Company and are removed from the pay roll of Odenbach during such time. During their transfer their personnel records and files are also transferred and the Company stated at the hearing that while such persons are working in Ojus they are "employees of the Company." It appears that the employees from Odenbach are transferred for a period of 90 days or longer as needed to complete the Company's present contract with the United States Army and as the work progresses many of them will be transferred back to Odenbach. It appears that the status of these employees while at the Company's Ojus plant is the same as that of the other employees of the Company. Their interest in collective bargaining and in the result of a Board election is identical with that of the employees generally. We find that the employees transferred from the Odenbach plant have a substantial interest in the selection of a bargaining representative by employees of the Company and are therefore eligible to vote.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Florida Shipbuilding Corporation, Ojus, Florida, an election by secret ballot shall be

conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., for the purposes of collective bargaining.